

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7984 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

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SHANABHAI VARAVAJI MAKWANA

Versus

STATE OF GUJARAT

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Appearance:

MR JK PARMAR for Petitioner

MR.NEEGAM SHUKLA, AGP for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 16.5.1996 passed by the Police Commissioner, Ahmedabad City whereby the petitioner has been detained under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 16.5.1996 and since then the petitioner is under detention lodged at District Jail, Bhuj.

This Special Civil Application is filed in this Court on 16.10.1996 and on 24.10.1996 Rule retrunable was issued but so far no reply or affidavit of the Detaining Authority has been filed.

The grounds of detention enclosed with the detention order show that 12 criminal cases for various offences under IPC Chapters 16 and 17 were registered against the petitioner during the years 1994 to 1996 at Police Station, Sabarmati, and Naranpura. Besides this the Detaining Authority has also taken into consideration the statements made by the witnesses with regard to the incidents dated 14.4.1996 and 5.4.1996. The petitioner has been found to be dangerous person and accordingly the detention order has been passed. The detention order has been passed on more than one grounds but the learned counsel for the petitioner has stressed that no case of breach of public order is made out.

In view of the law laid down by the Supreme Court in the case of M.J.Shaikh Vs. M.M.Mehta, 1995(2) GLR Pg.1268 (Mustakmiya's case) it is clear that the allegation and material relied upon by the Detaining Authority against the petitioner do not constitute the case of breach of public order and at the most it is a case of law and order. The detention order therefore deserves to be quashed and set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 16.5.1996 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner-detenu and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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